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Via Electronic Mail and Federal Express

August 3, 2010

Doug Garbarini
Chief, New York Remediation Branch
Emergency and Remedial Response Division
United States Environmental Protection Agency, Region 2
290 Broadway, 18th Floor
New York, New York 10007-1866

**Re: Hudson River PCBs Superfund Site
Consent Decree (Civil Action No. 1:05-CV- 1270)
Notification Regarding EPA's Decision To Withhold GE's Allowable Load
Memorandum from Peer Review Panel**

Dear Mr. Garbarini:

This letter addresses EPA's decision to withhold from the independent panel of scientists evaluating Phase 1 of the Hudson River dredging project a report that addresses a central question posed by members of the panel: What quantity of PCBs can be resuspended and released during the process of dredging during Phase 2 before the environmental benefits of the selected remedy are compromised?

On July 29, 2010, the General Electric Company (GE) received the decision of EPA Assistant Administrator Stanislaus, set forth in his letter of the same date to Ann R. Klee of GE, not to provide to the Peer Review Panel GE's technical memorandum titled *Proposed Allowable Downstream PCB Load for the Hudson River Dredging Project* (Allowable Load Memorandum), which was provided to the Peer Review Contractor on June 28, 2010. In that letter, Assistant Administrator Stanislaus stated that "the Consent Decree does not give me a role in deciding disputes which arise under the Decree," but that, "at [GE's] request and in my discretion, I have chosen to review this particular matter." The letter thus indicates that the Assistant Administrator treated GE's prior requests to EPA Region 2, including the Regional Administrator, and to the Assistant Administrator as equivalent to invoking administrative dispute resolution under the Consent Decree, and that he had chosen to review the matter and make a final decision for EPA.

Under Section XIX, Paragraph 84.a, of the Consent Decree, GE is required to notify the United States within five days of EPA's decision in order to preserve the right to seek judicial review of that decision. This letter serves as notice to the United States pursuant to Paragraph 84.a of the Decree.

As you know, members of the peer review panel, at their public meeting in May, pressed both EPA and GE for an estimate of how much PCB could be resuspended during the second phase of dredging before the benefits of the project were compromised. GE advised the panel that based on its state-of-the-science model the current best estimate was that the amount of PCBs added by dredging should not exceed 1200 kg. However, it also informed the panel that this was an overestimate and the model was being updated to account for the fact that PCBs were being redistributed in surface sediments downstream of the areas being dredged. GE committed that it would provide the updated PCB load estimate by the end of June. As promised, GE performed the computations with its model, and on June 28, sent its report to EPA, with the request that it be forwarded to the peer review panel. EPA decided to withhold the information from the panel even though it was promised to the peer reviewers and was submitted by GE on the timetable presented in May. Significant amounts of information have been submitted to the peer review panel before and since the May meeting, in response to the peer reviewers' requests for additional information. To the best of our knowledge, the only information that EPA has decided to suppress during this process is the GE report that addresses a central question posed by members of the peer review panel. This information was expected by the panel and is central to the charge to the panel.

If GE files a motion for judicial review, it will ask the Court to review EPA's decision to withhold the Allowable Load Memorandum from the Peer Review Panel.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sheri L. Moreno', with a long horizontal line extending to the right.

Sheri L. Moreno
Counsel, Hudson River Program

cc:

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